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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,039	01/21/2004	Joseph Michael Lindacher	CL/V-32813A	3884
31781	7590	03/24/2005		EXAMINER
CIBA VISION CORPORATION PATENT DEPARTMENT 11460 JOHNS CREEK PARKWAY DULUTH, GA 30097-1556				SUGARMAN, SCOTT J
			ART UNIT	PAPER NUMBER
				2873

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/762,039	LINDACHER ET AL	
	Examiner	Art Unit	
	Scott J. Sugarman	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3, 14-17, 19-30, 32-36, 42-46 and 56-59 is/are rejected.
- 7) Claim(s) 4-13, 18, 31, 37-41 and 47-55 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 1/21/4/22; 12/2/04.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 14-17, 19, 20, 21-30, 32, 33-36, 42-46, 56-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roffman. Roffman teaches that the curvatures and thicknesses of a real lens produce well known-optical aberrations...including coma..." (col. 1, lines 34-41). Roffman teaches an ophthalmic lens (1) having an optical zone, where the optical zone has a first surface and an opposite second surface and would, therefore include a coma-like wavefront aberration. The orientation would depend upon the prescription requirements of the wearer. Roffman teaches that the lens structure can be used as a spectacle lens, contact lens or IOL (col. 1, lines 6-11). The Examiner takes Judicial Notice that it is well known to utilize a slab off technique for stabilizing the lens of Roffman, since this is the oldest known method in contact lens literature of stabilizing contact lenses. Reshaping the cornea using the a coma-like wavefront aberration is within the teaching of Roffman, since, once the shape of the corrective surface is known, Roffman teaches that it can be applied in the well known corrective methods of the ophthalmic arts (col. 1, lines 6-11).

***Allowable Subject Matter***

Claims 4-13, 18, 31, 37-41 and 47-55 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach or suggest using Zernike polynomials as well as the specific numerical conditions of claims 8 and 52.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dunn et al is cited to show contact lenses having other types of aberration control.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott J. Sugarman whose telephone number is (571)272-2340.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Scott J. Sugarman  
Primary Examiner  
Art Unit 2873

sjs  
March 19, 2005